



## ***City of El Paso – City Plan Commission Staff Report***

<b>Case No</b>	SUAX12-00001
<b>Application Type</b>	Annexation (Agreement Only)
<b>DCC Date</b>	September 12, 2012 (Agreement Review)
<b>CPC Hearing Date</b>	October 4, 2012
<b>Staff Planner</b>	Justin Bass, 541-4930, bassjd@elpasotexas.gov
<b>Location</b>	South of the Intersection of Vista Del Sol Drive and Cherrington Street
<b>Legal Description</b>	A portion of Cherrington Street, Southerly of Vista Del Sol Drive, within Gateway Estates, El Paso County, Texas
<b>Acreage</b>	0.35-acre
<b>Rep District</b>	Adjacent to Representative District 5
<b>Existing Use</b>	Vacant
<b>Existing Zoning</b>	ETJ
<b>Proposed Zoning</b>	R-F (Ranch-Farm)
<b>Property Owner</b>	County of El Paso
<b>Applicant</b>	CEA Group
<b>Representative</b>	CEA Group
<b>Distance to Park:</b>	6,497 feet (Paseo Del Sol Park)
<b>Distance to School:</b>	10,645 feet (John Drugan Elementary School)

### **SURROUNDING ZONING AND LAND USE**

**North:** ETJ, Industrial Site/Vacant

**South:** R-3 (Residential), Vacant

**East:** ETJ, Vacant

**West:** ETJ, Vacant

**PLAN EL PASO DESIGNATION:** O6 Potential Annexation.

**NEIGHBORHOOD ASSOCIATIONS:** None

### **General Information:**

The applicant is requesting an annexation of County right-of-way, known as Cherrington Street, within the Gateway Estates county subdivision. The subject property is 0.35-acre in size and is currently unimproved. The subject property will be zoned R-F (Ranch-Farm) at the time of annexation.

The property is intended to be used as an additional and necessary point of connection for land within the Paseo Del Sol Land Study (Mesquite Trails Subdivisions) located to the south.

**Staff Recommendation:**

The Development Coordinating Committee (DCC) recommends **approval** of this annexation request along with the Annexation Agreement.

**(Resolution and Annexation Agreement – See Attachment 7)**

The recommendation is based on the following:

**Plan El Paso O-6 Potential Annexation:** Potentially developable land that is not needed for urban expansion at this time but is available if expansion is needed. Land can be redesignated from O-6 to a growth sector through a formal amendment to the Future Land Use Map.

**Findings:**

The Commission must determine the following:

1. Will the annexation protect the best interest, health, safety and welfare of the public in general?
2. What is the relation of the proposed change to the city's Comprehensive Plan?
3. What effect will the annexation have upon the natural environment social and economic conditions and property values in the vicinity and in the City as a whole?

**City Development Department - Building Permits and Inspections Division:**

No objection.

**City Development Department - Planning Division:**

No objection.

**Planning-Transportation:**

- Staff recommends utilizing the 56' Residential Collector currently shown in the subdivision code.
- If utilizing the entire 60', staff recommends 6-foot sidewalks, 7-foot parkways, 7-foot parking lanes, and 10-foot lanes.
- Staff also recommends that trees be placed 30' on center, on average, reflecting current landscape standards in Chapter 18.46, Article IV of the El Paso Municipal Code.

**Fire Department:**

No objection.

**Parks:**

No comments received.

**El Paso Water Utilities:**

1. EPWU does not object to this request.

2. The subject property is located within the City of El Paso Eastside Impact Fee Service Area. Impact fees will be assessed and collected by EPWU after the El Paso Water Utilities receives an application for water and sanitary sewer services.

**General:**

3. There are no water mains on the vicinity of Cherrington Street.

4. There is an existing 42-inch diameter sewer interceptor located approximately 5-feet east of the eastern right-of-way line of Cherrington Street. No direct service connections are allowed to this sewer main as per the El Paso Water Utilities – Public Service Board Rules and Regulations.

**TxDOT:**

No comments received.

**County of El Paso:**

No comments received.

**Attachments:**

**Attachment 1: Location Map**

**Attachment 2: Aerial Map**

**Attachment 3: Zoning**

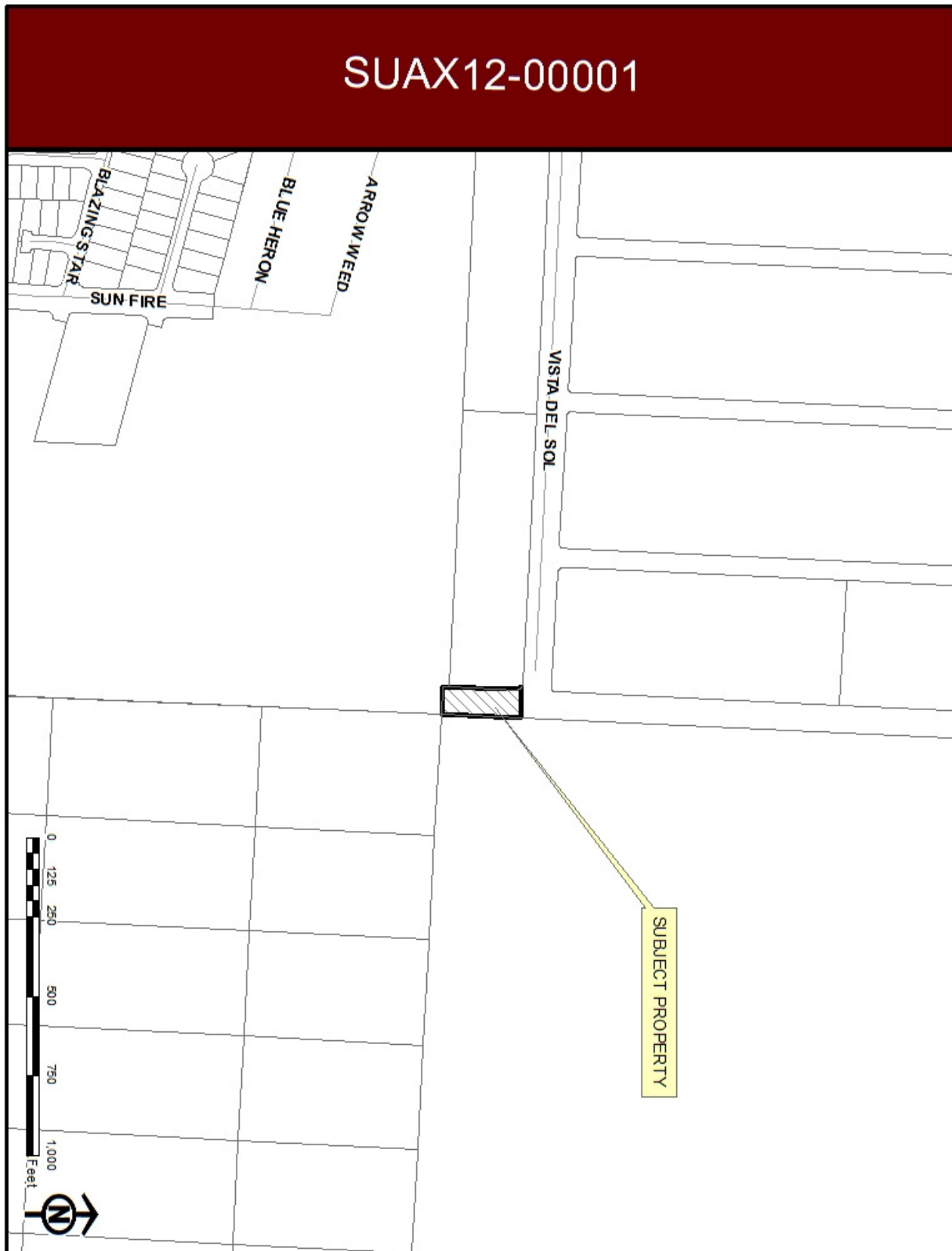
**Attachment 4: Gateway Estates Subdivision**

**Attachment 5: Paseo Del Sol Land Study**

**Attachment 6: Mesquite Trails Unit Eight Proposed Subdivision**

**Attachment 7: Resolution and Annexation Agreement**

Attachment 1: Location Map



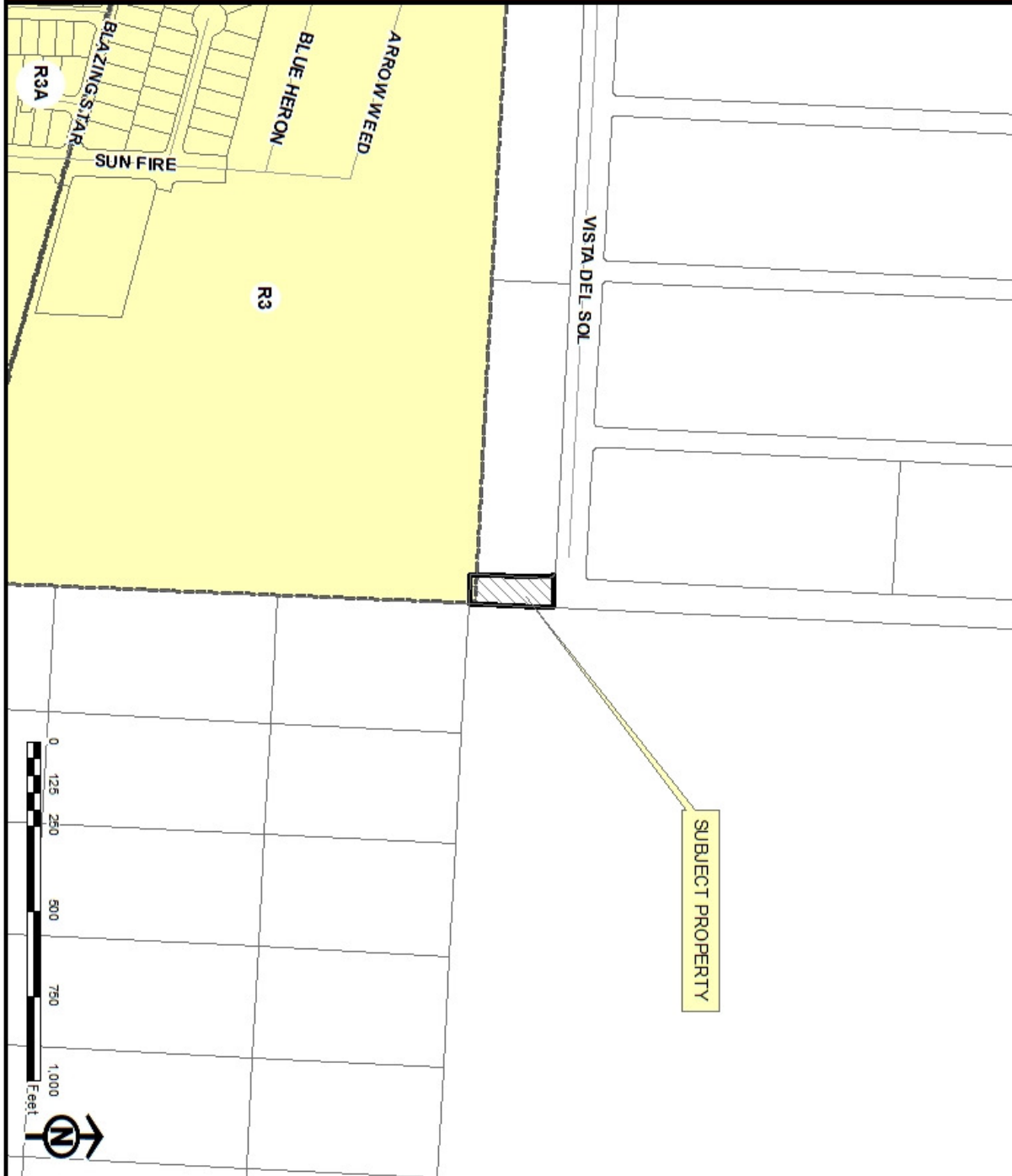


Attachment 2: Aerial Map



Attachment 3: Zoning

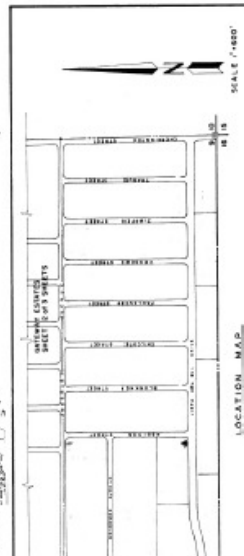
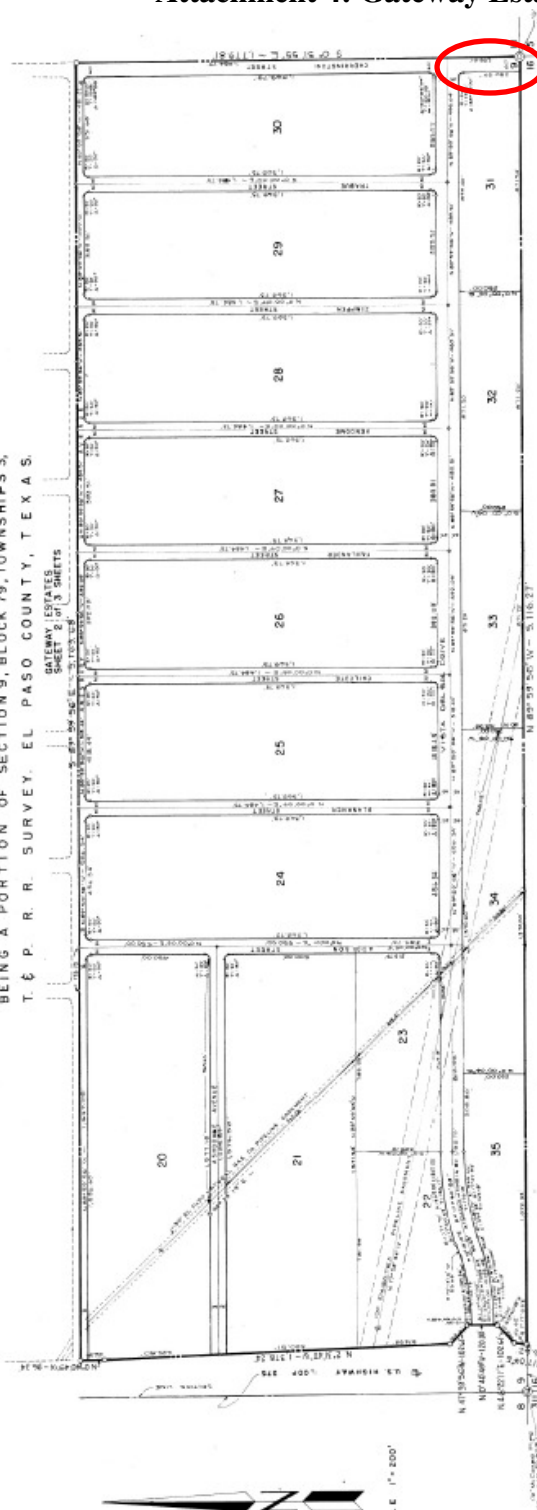
SUAX12-00001





# GATEWAY ESTATES

SHEET 3 OF 3 SHEETS  
CONTAINING 209.535 ACRES  
BEING A PORTION OF SECTION 9, BLOCK 79, TOWNSHIP 3,  
T & P. R. R. SURVEY, EL PASO COUNTY, TEXAS.



FILING

## DEDICATION

## ACKNOWLEDGEMENT

APPROVAL

**DEDICATION**

THIS is to certify that the within and foregoing is a true and correct copy of the original as the same appears on the records of the County of San Diego State of California this 11th day of March 1917.

Wm. E. Steele  
County Clerk

**ACKNOWLEDGEMENT**

I, Charles E. Steele  
County Clerk  
San Diego  
California  
March 11 1917

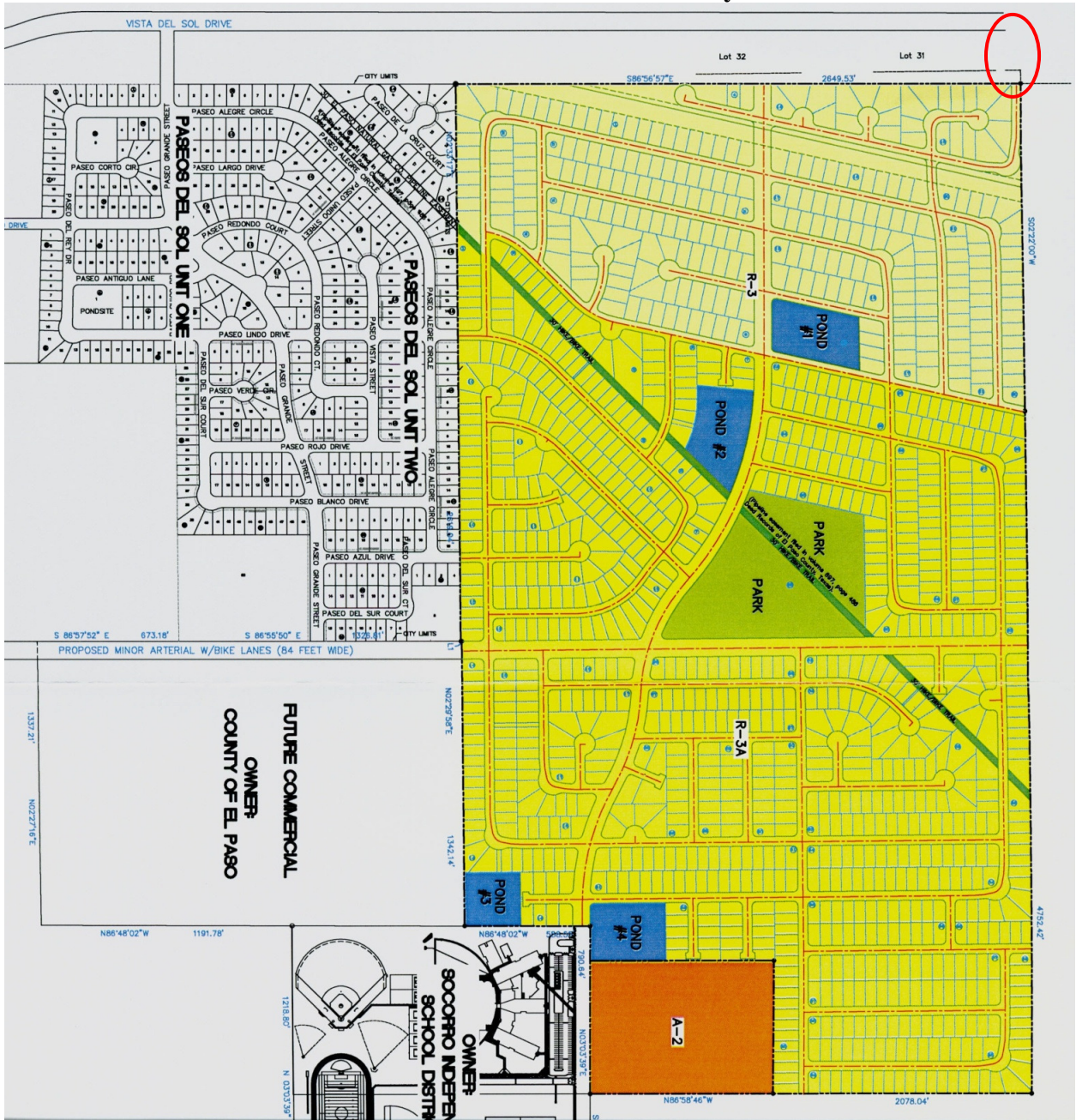
**APPROVAL**

My commission expires on the 11th day of March 1917.  
James E. Steele  
County Judge  
San Diego  
California

8-17B-G

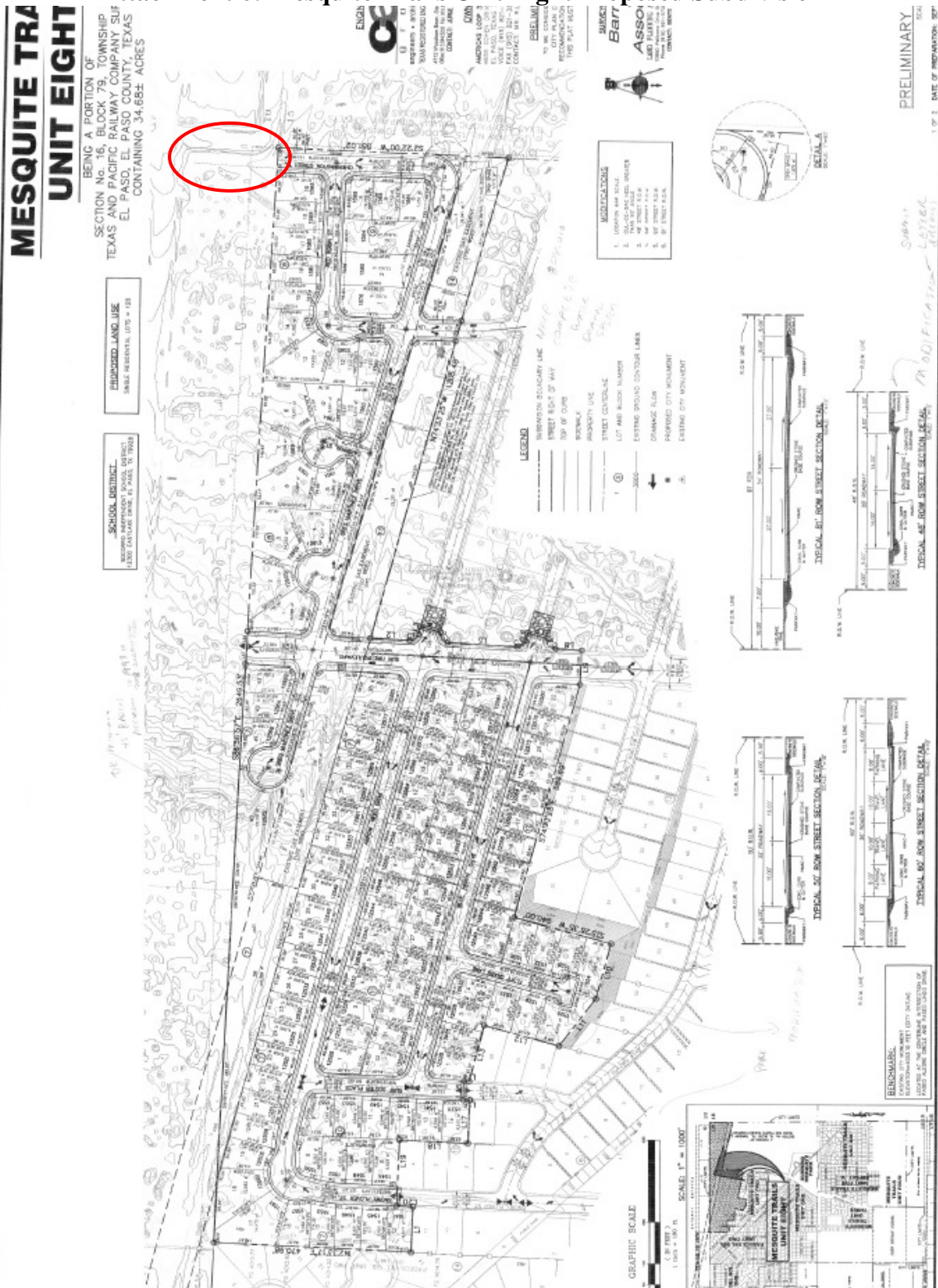
8-17B-G

## Attachment 5: Paseo Del Sol Land Study





# Attachment 6: Mesquite Trails Unit Eight Proposed Subdivision



## **Attachment 7: Resolution and Annexation Agreement**

### **RESOLUTION**

**WHEREAS**, the City and County of El Paso wish to annex approximately 0.35 acres of real property described in Exhibit "A" and Exhibit "B" which is attached and incorporated for all purposes, and of which the County of El Paso is the owner of approximately of 0.35 acres of such real property; and,

**WHEREAS**, the Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City and the Property Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and,

**WHEREAS**, the City has determined that if the Property is annexed, such annexation should be subject to certain terms and conditions which will require the Property Owner to assist in bearing the costs for municipal infrastructure costs and costs for providing municipal services to the annexed area; and,

**WHEREAS**, Property Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and,

**WHEREAS**, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an Annexation Agreement between the City and County of El Paso, for 0.35 acres of real property located South of the Intersection of Vista Del Sol Drive and Cherrington Street which will specify the terms and conditions in which the property will be annexed should the City annex the property.

That the Director of Planning prepare an annexation service plan in accordance with Section 43.056 of the Local Government Code.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**THE CITY OF EL PASO**

**ATTEST:**

\_\_\_\_\_  
John F. Cook, Mayor

\_\_\_\_\_  
Richarda Duffy Momsen, City Clerk

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Lupe Cuellar,  
Assistant City Attorney

\_\_\_\_\_  
Mathew S. McElroy, Director  
City Development Department



THE STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO        )

**ANNEXATION AGREEMENT**  
**SUAX12-00001**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of El Paso, Texas, a Municipal Corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), and the County of El Paso (hereinafter referred to as "Owner");

**WHEREAS**, Owner is the owner-of-record of 0.35 acres of real property described in Exhibit "A" and Exhibit "B" that is attached to this annexation agreement (which real property is hereinafter referred to as "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

**WHEREAS**, Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and

**WHEREAS**, Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and,

**WHEREAS**, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

One: Should the City annex the Property such annexation will be in accordance with the terms and conditions of this Agreement. This Agreement shall be an exhibit to the ordinance which annexes the property and shall be incorporated for all purposes. It is understood by the Owner that there are significant costs to the City associated with the annexation of Property into the City and of paramount consideration for the City in entering into this Agreement is that the Owner participate in the municipal infrastructure costs and costs for providing municipal services as required in this Agreement.

Two: Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and the Rules and Regulations of the El Paso Water Utilities/Public Service Board, and Owner agrees to comply with the additional requirements. Owner agrees to develop the Property in accordance with the following additional conditions:

1. No off premise signs shall be permitted on the property.

2. Property is to be used for right-of-way purposes only (extension and improvements to Cherrington Street).
3. Trees are to be placed 30-ft on center, on average, within the parkway of Cherrington Street per the current landscape standards in Chapter 18.46, Article IV of the El Paso Municipal Code.

Three: Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code.

Four: Owner shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner within thirty (30) days from passage of the ordinance annexing Property to the City. The aerial and other evidence shall be submitted to the Zoning Administrator in the City Development Department of the City for validation of such non-conforming lot, use, or structure within the Property.

**Notice:** Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, (iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

(1) CITY: City of El Paso  
Attn: City Manager  
2 Civic Center Plaza  
El Paso, Texas 79901

Copy to: City Clerk  
Same Address as above

OWNER: County of El Paso  
500 E. San Antonio  
El Paso, TX 79901

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Party. If any date or any period provided in this agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

**Successors and Assigns:** This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and



inure to the benefit of the parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land-use regulations that may apply to a specific lot.

**Remedies:** This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty- (30-) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

**Force Majeure:** In the event that any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other inability of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

**Severability:** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom, and the invalidity thereof shall not affect any of the other provisions contained herein, provided that any invalid provisions are not deemed by the City or the Owner to be material to the overall purpose and operation of this Agreement. If the City or Owner determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to disannex the Property. If the Owner has made such determination, the Owner shall have the option to terminate this Agreement. Such judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

**Entire Agreement:** This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.

**Governing Law, Jurisdiction & Venue:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

**No Third-Party Beneficiary:** This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

**Waiver:** Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Reservation of Rights:** to the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

**Further Documents:** Each Party agrees that at any time after execution of this Agreement, it will upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effect the terms of this Agreement.

**Incorporation of Exhibits and Other Documents by Reference:** All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

**Effect of State and Federal Laws:** Notwithstanding any other provisions of this Agreement, each Party in carrying out the terms of this Agreement shall comply with all applicable State and Federal laws.

**Headings:** The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.

**Ambiguities:** In the even of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

**Counterparts:** It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

**Authority for Execution:** Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.



IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Joyce Wilson  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Lupe Cuellar  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
William F. Studer, Jr., Deputy City Manager  
Development & Tourism

**ACKNOWLEDGMENT AND ACCEPTANCE ON FOLLOWING PAGE**

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2012,  
by Joyce Wilson, as City Manager of the City of El Paso, Texas

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:

**ACCEPTANCE**

The above Agreement, with all conditions thereof, is hereby accepted this \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

**Owner(s):** County of El Paso

By: \_\_\_\_\_

Title: \_\_\_\_\_  
County of El Paso

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
COUNTY OF EL PASO   )

      This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2012,  
by \_\_\_\_\_, as \_\_\_\_\_ of County of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed or Typed Name

\_\_\_\_\_  
My Commission Expires:



**Exhibit A**  
**Metes and Bounds Description**

**Barragan & Associates Inc.**

Land Planning & Land Surveying

10950 Pellicano Dr., Building "F", El Paso, Texas 79935 Ph. (915) 591-5709 Fax(915) 591-5706

**METES AND BOUNDS DESCRIPTION**  
**(CHERRINGTON STREET)**

**DESCRIPTION** a parcel of land being a portion of Cherrington Street, Southerly of Vista Del Sol Drive, within Gateway Estates, El Paso County Texas, according to the plat thereof on file in volume 41, pages 13, 13A, and 13B, Plat of Records of El Paso County, Texas and being more particularly described by metes and bounds as follows:

**COMMENCING** for reference at a found Concrete Monument in the centerline of Loop 375 (No Brass Cap) at Station 240+24.50 (Original 2" Pipe McCombs corner replaced with MKR. And G.P. noted on TxDot Plans (Now Removed)), from **WHENCE** a found 1/2" Iron Rod as called for in Volume 2827, Page 277, bears S 89°59'56" E (Bearing Basis), along the Southerly line of Gateway Estates, a distance of 2656.22 feet; **THENCE**, S 89°59'56" E, along said Southerly line, a distance of 5309.09 feet, as called by the plat of Gateway Estates, to a point on the Southeasterly corner Gateway Estates, said point also being the **POINT OF BEGINNING** of this survey;

**THENCE**, N 89°59'56" W, along said Southerly line of said Gateway Estates, a distance of 60.00 feet to a point;

**THENCE**, N 00°31'55" W, along the Westerly right-of-line of Cherrington Street, a distance of 230.20 feet to a point;

**THENCE**, 31.23 feet along the arc of a curve to the left, with a radius of 20.00 feet, an interior angle of 89°28'01", and a chord which bears N 45°15'56" W, a distance of 28.15 feet to a point on the Southerly right-of-way line of Vista Del Sol Drive;

**THENCE**, S 89°59'56" E, a distance of 79.82 feet to a point on the Easterly right-of-way line of Cherrington Street;

**THENCE**, S 00°31'55" E, along said right-of-way line, a distance of 250.01 feet to the **POINT OF BEGINNING** of this parcel of land and containing in all 0.35 acres of land more or less.

**Notes:**

1. Bearings recited herein are based on the filed plat for Gateway Estates.
2. A Plat of Survey of even date accompanies this Description.
3. This description does not intent to be a subdivision process, for owner purposes only. Not to be used to convey property.
4. This property is subject to easements and restrictions whether of record or not.
5. No corners set, based on record information.
6. Found concrete monument by previous survey.

  
Benito Barragan T.X.R.P.L.S. 5615, April 09, 2012  
Portion of Cherrington Street



# Exhibit B Survey Map

